McDONALD CARANO

Rory T. Kay
Jane Susskind
rkay@mcdonaldcarano.com
jsusskind@mcdonaldcarano.com

Reply to Las Vegas

December 19, 2022

Via Email to Clerk of the Court
(nvscclerk@nvcourts.nv.gov)

Chief Justice Ron Parraguirre
Nevada Supreme Court
201 South Carson Street
Carson City, Nevada 89701-4702

Re: Supplemental Comments re Proposed Amendments to ADKT 602 and ADKT 603

Dear Chief Justice Parraguirre:

Under the Court's order dated December 1, 2022, we write to you for our client the Nevada State Apartment Association ("Association") related to the amendments that the Honorable Melissa Saragosa submitted in ADKT 602.[1] Our below comments will address Chief Judge Saragosa's proposed amended language, certain oral clarifications she provided during the December 7, 2022, hearing, and comments from the Court on the same.

Chief Judge Saragosa Has Not Submitted Final Amendments for Public Review and Comment, and So the Administrative Docket Rules Do Not Permit the Court to Consider Them.

Throughout the hearing, the Court expressed concerns with the amendments that Chief Judge Saragosa filed on December 1, 2022. Chief Judge Saragosa attempted to orally clarify several provisions and conceded that she did not properly draft other provisions. Still, as of today's date, Chief Judge Saragosa has yet to file or circulate any further proposed amendments to ADKT

[1] Chief Judge Saragosa did not file amendments to ADKT 603, though the substance of the petition in that matter remains in dispute.

602 or ADKT 603. Her oral clarifications and concessions are critical and require thoughtful retooling of the proposed rule changes in ADKT 602 and ADKT 603.[2]

Because Chief Judge Saragosa has not submitted her final amendments to ADKT 602 or ADKT 603 as she discussed at the hearing, the Association respectfully asks this Court to deny the petitions in ADKT 602 and ADKT 603 as they currently exist. Under the Nevada Rules on the Administrative Docket, the Court may not consider the substance of any further amendments absent timely submission of the final proposed language.

If Judge Saragosa submits proposed amendments based on the changes discussed at the hearing, the Association requests that the Court extend or reopen the comment period or schedule another hearing before ruling. The revisions that Chief Judge Saragosa discussed during the hearing were numerous and substantive, and they were largely prompted by publicly filed written comments and questions at the hearing. They should be subject to further public scrutiny to allow for due process's basic tenets of notice and an opportunity to be heard.

The Hearing Confirmed That ADKT 602 and ADKT 603 Are Improper and Ineffective Attempts to Cure a Temporary Problem That Is Not Within the Court's Authority to Correct.

The Association and its members understand and appreciate the backlog of cases in the Las Vegas Justice Court. Chief Judge Saragosa suggested that the Las Vegas Justice Court was on pace to have 50,000 summary eviction proceedings filed during 2022. Like the Las Vegas Justice Court, the Association's members understand and are impacted by the swelling caseload. Chief Judge Saragosa confirmed during the hearing that the Association's members have been waiting up to six months to receive summary eviction orders that used to occur in a month or less.

As the main cause of this backlog, Chief Judge Saragosa stated that AB 486, which expires by its own terms in June 2023, compelled mediation when a tenant files for rental assistance from Clark County or other COVID-related governmental programs. She explained that the backlog was largely because of the Las Vegas Justice Court's inability to directly access information about the status of tenants' rental assistance applications with Clark County. Chief Judge Saragosa further noted that these government agencies were not timely communicating approval, denial, or change in status of the applications, and so the Las Vegas Justice Court had to delay hearings or otherwise stay cases indefinitely until it received confirmation or denial of rental applications.

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[2] *See, e.g.*, Dec. 7, 2022, Hearing, at 1:19:02-1:21:05 (discussing a drafting issue in the proposed amendments to Rule 6.8 of ADKT 602 about when a tenant versus a landlord fails to participate in mediation and agreeing to revise the same to make the rule reciprocal).

Finally, she explained that certain tenants filed multiple actions because of multiple applications for rental assistance, thereby multiplying the proceedings. These two issues had caused the summary eviction docket to swell in 2022.[3]

Still, Chief Judge Saragosa's proposed amendments do not address these issues or otherwise solve them. Instead, they violate the separation-of-powers doctrine and the spirit of summary eviction under NRS Chapter 40 by compelling landlords to mediate without their consent. As Justice Pickering correctly noted, these mediations would occur without any exit ramp for the landlords to remove a case from mediation, and there are not sufficient standards in the amendments' language defining which cases the Las Vegas Justice Court will divert to mediation. And while the amendments add another layer of governmental bureaucracy in the form of mediators and case workers who are funded in the short term by a $1.2 million grant, Chief Judge Saragosa has provided no long-term funding source for these mediators and case workers once the grant money runs out.[4] Finally, now that Chief Judge Saragosa has confirmed that the Eviction Diversion Program's case workers will report to the Las Vegas Justice Court and independently meet with tenants without landlords present, she has not explained how this complies with the Nevada Rules of the Code of Judicial Conduct that prevent ex parte communications between a court and parties.

Each of these issues independently defeats even the amended language of ADKT 602 and ADKT 603, and so the Association addresses them below and again reiterates its request that the Court deny the petitions.

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[3] These are relatively simple problems to fix, particularly considering the Las Vegas Justice Court's receipt of $1.2 million in grant funds. One possible solution would be to create a portal on the application website to give the Las Vegas Justice Court direct access to the information it needs. Or Clark County could create a single position to coordinate with the Las Vegas Justice Court to ease the burden and improve communication. This is especially true considering Chief Judge Saragosa has indicated that employees in the Eviction Diversion Program will be Clark County employees.

Rather than attempt these straightforward solutions, however, Chief Judge Saragosa is seeking to create an entire additional program that will face its own bureaucratic complications without substantially improving the underlying problem.

[4] Until the December 7, 2022, hearing, Chief Judge Saragosa had not confirmed that the grant money would be used to pay the case workers and mediators. As a result, the Association is unaware of any financial projection or budget that Chief Judge Saragosa has provided for how long the grant money will fund this upswell of governmental employees or how the Eviction Diversion Program would function if the grant money ran dry.

The Amendments Do Not Address the Association's Concerns[5] About Mediation Because They Still Allow (1) Court-Compelled Mediation (2) at the Las Vegas Justice Court's Unfettered Discretion (3) Without Sufficient Exit Ramps if the Parties Do Not Wish to Mediate.

1. The Amendments' Court-Compelled Mediation Violates the Separation-of-Powers Doctrine and the Spirit of Summary Evictions Under NRS Chapter 40.

Chief Judge Saragosa's original petitions required mandatory mediation of all summary eviction cases through the proposed local rule. *See* ADKT 602, Amendment to Proposed Rule 6.8(d) (noting the case "will be assigned to a mediator for mediation"). Under the amended language, although Chief Judge Saragosa has dropped the mandatory component of mediation, she has still maintained court-compelled mediation even if the parties object to the same. *See* Proposed Amended Rule 6.8(c)(3) (permitting the Las Vegas Justice Court to compel mediation at the recommendation of a case worker).

For all the reasons stated in the Association's initial letter, this violates the separation-of-powers doctrine and other constitutional mandates. As Justice Hardesty indicated at the hearing, the Court has the constitutional and statutory power to manage its docket. But it may not do so in a way that abridges, modifies, or otherwise alters parties' substantive rights. *See* NRS 2.120(2); *see also* Nev. Const. art. 3, § 1. The Nevada Legislature created landlords' and tenants' substantive rights to quick and streamlined summary evictions through NRS Chapter 40. *See, e.g.*, NRS 40.253(5) (creating substantive right to summary eviction that requires only the filing of an affidavit); NRS 40.253(6) (creating substantive right to a hearing). A court-compelled mediation program without any opt-out procedure for the parties would slow this process down, thereby defeating the very purpose and spirit of summary evictions. This effectively modifies, if not entirely abridges, landlords' substantive rights under NRS Chapter 40, and so adopting even the amended version of the rules with court-compelled mediation would violate the separation-of-powers doctrine.[6]

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[5] Contrary to Chief Judge Saragosa's representations at the hearing, the Association was not part of any negotiations as to the substance of the amendments and did not discuss specific changes prior to Chief Judge Saragosa submitting them. Her characterization to the contrary is inaccurate.

[6] Justice Hardesty is correct that NRS Chapter 40 does not have specified dates by which justice courts must process summary eviction cases. But the legislative history of these statutes shows that the Nevada Legislature intended the process to be, as its name states, summary and quick: "Summary eviction is a very unique, very fast type of eviction process that we have in this state." Sen. Julia Ratti, Hearing on S.B. 151 Before the Assembly Judiciary Comm., 80th Leg. (Nev., May 7, 2019) at 29 (providing remarks on proposed amendments to NRS 40.253 and

Even beyond the threshold separation-of-powers issue, however, court-compelled mediation is bad policy. First, as Mr. Williams mentioned at the hearing, parties that are forced to mediate rarely do so in any meaningful way. Instead, compelled mediation is often an unnecessary and unproductive speed bump in the process. *See generally* Leonard L. Riskin, *Decisionmaking in Mediation: The New Old Grid and the New New Grid System*, 79 Notre Dame L. Rev. 1, 21 (2003) (explaining how parties' motivations to mediate often influence outcomes positively or negatively).[7]

Second, while most mediations in other contexts serve the purpose of establishing or verifying key facts for the parties before a court ultimately decides the same, mediations in summary evictions do no such thing. *See* John Lande, *A Survey of Early Dispute Resolution Movements*, 40 Alternatives to High Cost Litig. 57, 57–63 (2022) (noting the benefits of mediation in clarifying "difficult problems" and "reducing adversarial dynamics"). The parties in summary evictions are already aware that tenants have not paid rent, and so there is no fact finding benefit to conducting forced mediation in summary evictions.

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explaining that this procedure "is unique to the state of Nevada"). This is because landlords that elect summary eviction as a remedy forego the right to obtain a money judgment in the action. In other words, landlords choose quick recovery of the property over the ability to obtain money damages related to the same.

A system that allows justice courts to push cases out up to six months without sufficient deadlines by which departments must hold summary eviction hearings defeats the spirit of NRS Chapter 40 and its election of remedies. Landlords are still foreclosed from seeking money damages, but they also no longer obtain the benefit of quickly recovering their properties. The Association's proposed redlines set dates certain for hearings rather than "on the Court's first available hearing date" as the amendments do. *See* Proposed Amended Rule 6.4(d) (permitting the Las Vegas Justice Court to hear motions to stay summary eviction orders "on the Court's first available hearing date, but not sooner than ten calendar days from the date the Motion is approved for hearing"); Proposed Amended Rule 6.5(c) (permitting the Las Vegas Justice Court to hear motions to set aside summary eviction orders "on the Court's first available hearing date, but not sooner than ten calendar days from the date the Motion is approved for hearing"). The Association's proposed changes thus comply with the spirit of summary evictions rather than leaving such hearing dates open-ended and at the Las Vegas Justice Court's calendaring discretion.

[7] One of mediation's core benefits is that the parties consider it "fair" since they most often agreed to mediate. That inherent sense of fairness is absent when courts compel parties to mediate, and the motivations for parties to mediate are often lacking in such scenarios.

Finally, many other jurisdictions that have embraced eviction mediation do so through an opt-in process in which the parties choose to pursue mediation rather than having a court compel them to do so. Legal Aid Center of Southern Nevada ("Legal Aid") cites a study that identifies "47 formally designated eviction prevention and/or diversion programs." Deanna Pantin Parrish, *Designing for Housing Stability: Best Practices for Court-Based and Court-Adjacent Eviction Prevention and/or Diversion Programs*, ABA & HARV. NEGOT. & MEDIATION CLINICAL PROGRAM 18 (2021). These programs do not all include eviction mediation, let alone mandatory mediation. On the contrary, the term "diversion" encompasses a variety of methods that include efforts outside of the court system, like providing hotlines for tenants facing eviction, access to legal services, and workshops on available resources. What these 47 programs have in common, however, is that all of them were either created or modified in direct response to COVID-19 and aim to respond to "COVID19–related financial hardship." *Id.* No such hardship remains in 2022 and beyond that would justify compelled eviction mediation.

Further, the primary source of Legal Aid's statistic is an Urban Institute report that analyzes each program. *Id.* (citing and linking to Urban Institute's analysis); *see generally* Mark Treskon et al., *Eviction Prevention and Diversion Programs*, URBAN INST. (2021). In its report, Urban Institute focused on four programs: COVID-19 Eviction Defense Project (Colorado); Texas Eviction Diversion Program (Texas); Pinellas Eviction Diversion Program (Florida); and Philadelphia Eviction Prevention Project (Pennsylvania). *Id.* at 10-11. Three of the four programs are voluntary, not mandatory. *Id.* at 11. And the only program that is mandatory, the Philadelphia Eviction Prevention Project, is a court-adjacent program that was created by a legislative act. PHILADELPHIA, PA., Bill No. 210920 (Dec. 16, 2021) (amending Chapter 9-800 of the Philadelphia Code, entitled "Landlord and Tenant," to provide for an eviction diversion program); *see also* PHL EVICTION DIVERSION, https://eviction-diversion.phila.gov/#/ (last visited Dec. 13, 2022). Notably, Pennsylvania's eviction laws do not provide landlords with summary relief, which is unique to Nevada. *Compare* 68 Pa. Stat. Ann. § 250.502 (requiring the filing of a complaint and service of summons); *id.* § 250.503 (requiring landlord to sufficiently prove complaint at a hearing but providing no timeline or expedited treatment) *with* NRS 40.253. If the Court embraced Chief Judge Saragosa's petitions, Nevada would be the only jurisdiction that had judicially compelled mediation authorized by an act of the judiciary rather than a legislative body.

These other jurisdictions do not force the parties to mediate because doing so is largely ineffective and defeats the cost savings typically associated with voluntary mediation. *See* J. Lande, *A Survey of Early Dispute Resolution Movements*, 40 Alternatives to High Cost Litig. 57, 57–63 (2022) (noting the benefits of voluntary mediation in reducing litigation costs). This is logical since the parties are often in the best position to determine whether mediation makes sense for the unique facts of their case. If landlords are concerned about six-month delays in current summary eviction proceedings, they can elect to pursue mediation rather than having the Las Vegas Justice Court paternalistically compel the same. This properly addresses the "emergency"

that Justice Hardesty mentioned during the hearing related to the 50,000 summary eviction proceedings for 2022. And it does so in a way that is both sound policy and in line with the separation-of-powers doctrine. Courts need not make decisions for litigants. Instead, courts should allow for landlords and tenants to decide whether voluntary mediation would productively resolve their summary eviction disputes.

2. *The Amendments Do Not Have Clear Standards Governing the Cases in Which the Las Vegas Justice Court Would Compel Mediation.*

As Justice Pickering correctly identified and Chief Judge Saragosa conceded, the amendments do not include clear and defined standards or criteria that the Las Vegas Justice Court would use to compel mediation in summary eviction cases. Quite the opposite, the amended Rule 6.8 allows the Las Vegas Justice Court to determine "[e]ligibility criteria" for compelled mediation and amend the same "from time to time" without notice based on "capacity and available resources." This is simply a modern iteration of John Selden's criticism that justice cannot be defined by the length of the chancellor's foot. *See Lonchar v. Thomas*, 517 U.S. 314, 323 (1996) ("As Selden pointed out many years ago, the alternative is to use each equity chancellor's conscience as a measure of equity, which alternative would be as arbitrary and uncertain as measuring distance by the length of each chancellor's foot."). There are no defined standards in the amendments to show landlords and tenants when their cases may be compelled to mediation, and so the Las Vegas Justice Court may make them up as it goes and change them on a whim.

When pressed on what criteria the Las Vegas Justice Court would use to compel mediation, Chief Judge Saragosa suggested that the Court would have to "trust" her that she would only compel mediation when the tenant successfully applied for rental assistance. But contrary to Chief Judge Saragosa's statement, democracies do not operate on trust in public officials to apply unwritten and unknown standards and rules to reach outcomes. Such vague rules are unconstitutional. Democracies function on an inherent distrust of government officials, and so constitutions, statutes, and rules of procedure go to great lengths to define controversies and the rules applied to them so that parties can predict consistent outcomes and govern their behavior accordingly. *See* The Federalist No. 78 (J. Cooke ed. 1961) ("It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them.").

Nevada is no different. The Nevada Constitution and supporting statutes clearly define the judiciary's role and require unequivocal standards and rules for deciding cases. If Chief Judge Saragosa wished to compel mediation only when a tenant has successfully applied for rental assistance, she should have drafted the proposed rules to establish this as the sole criterion for

assignment to mediation. She did not, and instead she has left justice to the length of the chancellor's foot. This would allow Chief Judge Saragosa to compel mediation in **all** eviction cases should she elect to do so. This violates the fundamental separation of powers between Nevada's courts and its legislature. It is unconstitutionally vague. And finally, it is also bad policy.

Though Justice Pickering suggested this was perhaps a "drafting error," it is concerning that such an error persisted through the original version of the petitions' language and the amendments as well. This only highlights the Association's point—the Nevada Legislature, not this Court or the Las Vegas Justice Court, is the appropriate branch of government to engage in lawmaking. Drafting clear laws is difficult, and the time and stakeholder input afforded by the legislative process ensures that the final versions of statutes or rules rarely include drafting errors. Rushing sweeping changes to summary evictions through the administrative docket process with midnight amendments—and perhaps more amendments in process—is not the appropriate method under the Nevada Constitution. Nor is it efficient in eliminating drafting errors.

3. The Amendments Do Not Have Exit Ramps That Allow the Parties to Opt Out of Compelled Mediation.

Chief Judge Saragosa's original petitions mandated mediation and allowed the Las Vegas Justice Court to dismiss filings if the tenant or landlord failed to comply. *See* Proposed Rule 6.8(d)((3)-(4). Under the amended rule, the Las Vegas Justice Court is allowed to remove a case from the Eviction Diversion Program if a tenant fails to appear at the Eviction Diversion Office or fails to cooperate with the case worker. *See* Amended Rule 6.8(c)(3). But the amended version contains no other method by which a landlord may remove the case from mediation if the mediation is unproductive or otherwise unlikely to succeed. *See id.* Quite the opposite, once a case is in mediation, there are not defined "exit ramps" for the parties or the Las Vegas Justice Court to remove a case from mediation. Indeed, the amendments as drafted include no procedural guiderails for how the mediator governs the process, how the mediation concludes, and the timelines by which the mediator must notify the Las Vegas Justice Court of the same. They are entirely silent on these issues.

Perhaps this is yet another drafting error, but at some point, so many drafting errors stack on top of each other that they render the petitions, even as amended, unworkable and impermissible. And at a minimum, they should give pause to this Court in adopting the same for fear of unintended consequences, constitutional violations, and improper drafting.[8]

[8] It is unclear from the Nevada Rules on the Administrative Docket whether the Court has the power to invoke the blue-pencil doctrine for petitions fraught with drafting errors. Rule 4.3 allows the chief justice to reject the petition, submit it directly to the Court for consideration, refer

The Amendments and ADKT 603 Do Not Address the Root Causes of the Purported Delay, and Other More Workable Solutions Exist That the Las Vegas Justice Court Has Not Tried.

At the beginning of her public comment, Chief Judge Saragosa explained that the Las Vegas Justice Court's docket on summary evictions had ballooned to over 50,000 cases filed in 2022. She suggested this was because of AB 486, the Las Vegas Justice Court's inability to receive timely updates from Clark County about rental assistance applications, and tenants filing multiple rental assistance applications to delay the summary eviction process. But the proposed amendments and ADKT 603 do nothing to address these root causes.[9] Instead, they only add another layer of governmental bureaucracy without drilling down on the true issues and the solutions available to address the same.

If AB 486 is problematic, then the solution under Nevada's democracy is to move the Nevada Legislature to change it. By its own terms, AB 486 expires at latest in June 2023, and so it should not impede the Las Vegas Justice Court's long-term docket. During the public hearing, Justice Hardesty noted that the Legislature may extend AB 486's sunset date, and it would be "foolish" for anyone to predict what the Legislature will do in the 2023 session. But where it is

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the petition to a study committee, or refer the petition to a special master. Rule 5.1 allows the Court to "adopt, modify and adopt, or reject" the petition.

But there is an inherent tension between (1) providing adequate notice and opportunity to all interested parties so that they may provide public comment on pending petitions and (2) the Court substantially revising or modifying a petition after the public comment period closes. To save Chief Judge Saragosa's amended petitions, the Court must substantially blue pencil them. Doing so, however, would not provide the public with sufficient notice and time to be heard on the Court's revisions. Due process requires otherwise.

[9] Though the December hearing did not focus on Chief Judge Saragosa's attempts to implement "mandatory" standardized eviction forms that Legal Aid would prepare, this is just as concerning as her attempts to compel mediation. If this Court approves the amendments to ADKT 602 and ADKT 603, it will be the only local rule that requires parties to use forms prepared by an entity operating outside of the Las Vegas Justice Court's authority. While the Association appreciates that the Las Vegas Justice Court may benefit from standard forms, the fact that Legal Aid—an organization solely dedicated to protecting tenants in summary eviction proceedings—would be creating and managing such forms creates an obvious conflict of interest. It further solidifies perceived, if not actual, bias in summary eviction proceedings. There is nothing efficient or constitutional about one side of disputes drafting standard forms that a court then requires all sides to use.

"foolish" to predict that the Legislature may do one thing, it is equally "foolish" to predict that it will do the opposite. And this is exactly the Association's point—if there is a flaw in Nevada's statutory scheme that has unreasonably inflated court dockets, the democratic institution charged with correcting that flaw is the Legislature. It is not the Court through using the administrative docket process to seize power where none exists.[10]

If, as Chief Judge Saragosa contends, communication issues between the Las Vegas Justice Court and Clark County as to rental assistance applications are holding up cases in the short term, then the solution is straightforward.[11] The Las Vegas Justice Court should work with Clark County to strengthen the communication channels so that the County provides immediate notice to the Las Vegas Justice Court when a tenant's application is approved, denied, or has a change in status. But Chief Judge Saragosa provided little information about continuing efforts to strengthen these communication channels, and so neither this Court nor the Association knows whether such efforts would succeed.

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[10] The Association is not blind or calloused to the administrative burden that falls on Nevada's courts when the Legislature takes improvident actions during a legislative session. Landlords feel the same from ballooning dockets that stall their ability to evict noncompliant tenants.

Still, under democratic principles, the problem remains with the Legislature to fix. As a result, judiciary committees exist each session and judges throughout the state often appear to testify in front of the same committees. If there is an "extraordinary occasion[]" impacting court dockets, the judiciary can also request that Nevada's governor call a special session of the Legislature. *See* Nev. Const., art. 5, § 9. To date, the Association is unaware of any request by Chief Judge Saragosa for a special session to correct AB 486 or the summary eviction process.

[11] Typically, a pending case is set for hearing months in advance. Mediation may occur during this time. When parties then appear for the hearing, the Las Vegas Justice Court updates the record as to the status of a tenant's rental assistance application. If the application is pending, the case is stayed indefinitely. If approved, the case is dismissed, and if denied, the case should be adjudicated.

However, the delays in getting updates on the rental assistance applications have caused the Las Vegas Justice Court to stay cases indefinitely even when the application has been approved or denied. This means that cases that should be moving forward are stalled. Strengthening the communication between Clark County and the Las Vegas Justice Court is the core issue, not compelled mediation, the forms used for summary eviction, or any of the other proposed changes in the amendments.

And if the County cannot properly communicate the status of applications, then the fallback solution is to have tenants do the same. If tenants are taking shelter under approved rental assistance applications to prevent summary evictions, they should be responsible for notifying the Las Vegas Justice Court within a defined number of judicial days after approval. This would allow the Las Vegas Justice Court to receive timely updates about rental applications and dispose of cases without delays. Indeed, since the Las Vegas Justice Court intends to hire many case workers with new grant funds, surely it can have these case workers assist tenants in timely notifying the Las Vegas Justice Court of the status of rental assistance applications. This would remove the current cause of the short-term delays that have purportedly ballooned the Las Vegas Justice Court's docket. But the proposed amendments and ADKT 603 do not address this issue, and as drafted, the case workers will not assist in resolving the communication delays that Chief Judge Saragosa admits are the root of the problem.

Finally, the Court should be mindful that, unlike AB 486, the amendments in ADKT 602 and ADKT 603 do not have a sunset provision. Landlords have a right to put their properties to their highest uses, and the Nevada Legislature has recognized the same in providing for summary eviction. Yet as the amendments are currently drafted, Chief Judge Saragosa is asking for the authority to compel mediation in summary eviction cases independent of whether AB 486 remains or the Las Vegas Justice Court's docket remains unusually inflated. In other words, even though the Legislature may determine in the next legislative session that the "emergency" underpinning AB 486 no longer exists, Chief Judge Saragosa asks for unending power to compel mediation independent of the Las Vegas Justice Court's caseload.[12] This, too, violates the spirit of summary evictions under NRS Chapter 40, and it is likely a taking under the Nevada Constitution as well.

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[12] To the extent the Court considers the amendments to ADKT 602 and ADKT 603 as a solution to the short-term rise in cases from AB 486 and has the authority to blue pencil the same, it should provide a sunset provision for them and provide additional public comment to address the same. There is no justification for compelled mediation or many of the other changes if the Las Vegas Justice Court's docket returns to pre-2020 levels.

The Amendments and ADKT 603 Add Another Layer of Governmental Bureaucracy, and the Las Vegas Justice Court Has Not Addressed Long-Term Funding of This Bureaucracy or Concerns With Ex Parte Communications in the Same.

Chief Judge Saragosa confirmed at the public hearing that the Las Vegas Justice Court intended to use the $1.2 million grant[13] to fund the case workers and mediators discussed in Amended Rule 6.8(c). *See* Amended Rule 6.8(c) (stating that case workers would assist tenants and cases may be assigned to mediators based on case workers' recommendations). She also confirmed that such persons would be under the supervision of the Las Vegas Justice Court. *See id.* This was the first time she had stated the same to the Association and other stakeholders.

But Chief Judge Saragosa did not explain in any meaningful way how long the grant monies would fund this new layer of government bureaucracy or how the Las Vegas Justice Court intended to fund the same when the grant funds run out. Because the amendments do not have any sunset provision, it appears that Chief Judge Saragosa intends this new Eviction Diversion Program to be permanent. If so, she must explain how it will be funded and for how long those funds will last. She has not done so, and it would be inappropriate for this Court to permit

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[13] During the public hearing, Justice Hardesty asked if the Association had submitted a letter supporting this grant. The question implied that the Association therefore supported (or had waived objection to) all things that now flow from this grant, including the amended petitions' imposition of compelled mediation, the hiring of case workers and mediators to conduct the same, and the implementation of required summary eviction forms drafted by Legal Aid.

This implication is incorrect. The letter shows only that the Association supported the Las Vegas Justice Court's efforts to obtain funding to expand the Las Vegas Justice Court's hours, conduct remote court appearances, and offer additional resources to litigants on both sides who do not have access to a lawyer. *See* January 20, 2022, Letter from Association, attached as **Exhibit 1**. The letter did not consent to compelled mediation or required forms drafted by Legal Aid, and the Association could not have consented to the petitions in ADKT 602 or ADKT 602, or the changes to ADKT 602, as Chief Judge Saragosa had not presented the same to the Association as of the letter's date. *See id.*

Instead, the first time the Association received the language of the petitions in ADKT 602 and ADKT 603 was in late August 2022—just days before Chief Judge Saragosa filed them with this Court and subject to the process in the Nevada Rules on the Administrative Docket. This was nearly seven months after the Association issued the limited letter of support. This underscores how political the administrative petition process became in 2022 and the great lengths to which the Las Vegas Justice Court worked with one side of the issue while excluding the other. It also raises further issues of due process.

expanded governmental bodies without understanding long-term funding for the same. This is a clear issue that should go before the Nevada Legislature.

Perhaps even more troubling is the ex parte communications between the Las Vegas Justice Court and tenants that the proposed amendments would authorize. Amended Rule 6.8(c) requires case workers to communicate with tenants outside the landlord's presence so that the case worker can "assist the tenant with any application requirements for rental assistance **or any other available resource**." Amended Rule 6.8(c)(2) (emphasis added). The amendments do not define the scope of this communication as to other available resources, nor do they limit the types of communications that case workers can have with tenants. *See id.* There are no dates by which case workers must complete their analysis, and their recommendations provide the basis for compelling a case to mediation. *See id.* at 6.8(c)(3). Chief Judge Saragosa confirmed that the Las Vegas Justice Court would be hiring and supervising such case workers and that they would be in the Regional Justice Center. As a result, the case workers no doubt are agents of the Las Vegas Justice Court communicating with tenants on its behalf.

Yet the Nevada Code of Judicial Conduct prevents judges and their agents from having ex parte communications with parties about the substantive merits of a case. *See* NCJC 2.9(A). Though Rule 2.9 provides narrow exceptions allowing ex parte communications in some circumstances [14] Chief Judge Saragosa has provided no analysis of why a case worker's communications with a tenant through the Eviction Diversion Program are not prohibited ex parte communications. It is not hard to imagine that judges who wish to ease pressure on their docket may encourage case workers to provide recommendations favoring mediation, and it is not hard to see how case workers under the influence of the same judges could direct tenants on how to create or establish "facts" justifying such recommendations with no landlords present. This is especially true when the mediation program in question is brought into existence by the Chief Judge of the Las Vegas Justice Court.

Nevada's judicial conduct rules prohibit perceived bias in judicial decision-making just as much as actual bias. *See* NCJC Rule 1.2, Cmt. 5 (judges must avoid "appearance of impropriety" when conduct would "create in reasonable minds a perception that the judge . . . engaged in conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."); NCJC Rule 2.3, Cmt 2 ("A judge must avoid conduct that may be reasonably perceived as prejudiced or biased."). Chief Judge Saragosa's proposed court-controlled case workers

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[14] These include communications for "scheduling, administrative, or emergency purposes" that do "not address substantive matters" in the case. NCJC 2.9(A)(1). Even for these communications, however, a judge must promptly "notify all other parties of the substance of the ex parte communication" and give the other parties "an opportunity to respond." *Id.* The amendments to ADKT 602 and 603 are silent as to these notice obligations.

communicating with tenants ex parte about the substance of summary eviction cases is perhaps the clearest example possible of perceived (and perhaps actual) judicial bias.

No landlord could believe he or she was getting a fair shake in summary eviction proceedings when the Las Vegas Justice Court conducts much of those proceedings ex parte behind the opaque curtain of the Eviction Diversion Program. Indeed, to this point, even getting information from the Las Vegas Justice Court about the Program was nearly impossible. This Court cannot put its imprimatur on the same by passing ADKT 602, even as amended, and ADKT 603, as they undoubtedly create the perception of judicial bias and authorize prohibited ex parte communications.

Conclusion

As stated in its initial comment letter, the Association and its members fully support tenants obtaining every dollar of rental assistance they can. If tenants cannot do so, however, landlords are entitled to transparent, timely, and meaningful relief under current summary eviction laws of NRS Chapter 40. They invoke the summary eviction remedy in exchange for foregoing a right to obtain money damages from defaulting tenants in the same proceeding. But as Chief Judge Saragosa conceded at the hearing, landlords are not getting this relief because of a purported backlog in cases caused by communication issues between Clark County and the Las Vegas Justice Court about rental assistance applications.

But the answers to that backlog do not rest with this Court and a distorted use of its administrative docket. Instead, the solution is strengthening communications with Clark County so that the Las Vegas Justice Court does not hold up cases while waiting for status updates about rental assistance applications. If this fails, tenants should have an obligation to provide the Las Vegas Justice Court with status updates as to their applications within a fixed number of judicial days. This is a fair trade for the shelter from eviction that such rental assistance provides, and these are actions that would immediately reduce the backlog of cases. They do not require the judiciary to make substantial changes to the Las Vegas Justice Court Local Rules to implement.

But it appears the Las Vegas Justice Court has not tried either of these solutions. Before this Court adopts sweeping and rushed changes to summary eviction cases, it should deny the amendments to ADKT 602 and ADKT 603 and instruct the Las Vegas Justice Court to implement the alternative solutions. If these fail, then Chief Judge Saragosa can return to this Court and suggest more aggressive changes.

And at the same time, the Las Vegas Justice Court should make its case in front of the Nevada Legislature in the next legislative session. That is the appropriate constitutional body to engage in such policymaking, and it is the body that created the summary eviction process in the

first instance. If there are short-term issues with AB 486, it is up to the Legislature to fix them. It is not up to this Court to seize lawmaking powers that it does not have under the Nevada Constitution.

These reasons are independently sufficient to outright deny the petitions in ADKT 602 and ADKT 603. If, however, Chief Judge Saragosa attempts to address these issues by filing a proposed amendment, or this Court attempts to correct the deficiencies through blue penciling the amendment's language as it currently stands, the Association reiterates its request for an opportunity to meaningfully address the amendments through additional written and public comment. Anything less would deprive the Association and other interested parties of their due-process rights of notice and an opportunity to be heard.

Sincerely,

MCDONALD CARANO LLP

Rory T. Kay

Jane Susskind

cc: Client
Elizabeth Brown, Clerk of Court

EXHIBIT 1

EXHIBIT 1

Nevada
STATE APARTMENT ASSOCIATION

January 20, 2022

Susy Vasquez
Executive Director
The Nevada State Apartment Association
director@nvsaa.org

To Whom it May Concern,

On behalf of the Nevada State Apartment Association, we submit this letter of support for the National Center for State Courts (NCSC) Eviction Diversion Initiative Grant Program. The Nevada State Apartment Association (NVSAA) is a not-for-profit organization who provides Nevada's multi-housing industry with legislative support, education, and community outreach, representing over 165,000 rental units throughout the state.

The Nevada State Apartment Association is supportive of the grant program for the following reasons, which include diverse hours for court proceedings, remote court appearances, and offering additional resources for litigants who do not have access to a lawyer.

- Unlike other court cases, evictions can be scheduled on short notice for the landlord and the tenant. A person's daytime obligations, such as work, childcare, and other prior responsibilities may conflict with a short notice eviction proceeding. Offering hours that may be out of the norm for courts would benefit people with these conflicts, especially if hours are scheduled later in the day or on weekends.
- Over the last two years the world has adjusted to a new way of life due to the COVID-19 pandemic, especially when it comes to remote meetings. Litigants may be dissuaded from attending a meeting in person for various reasons, including costly and time-consuming travel, or fear of exposure to COVID-19. Offering remote court appearances for initial court dates and status hearings may help increase participation. Additionally, integrating more modern technology, such as text messaging, chatbots, or e-mail, can be a more effective way at providing litigants with more information, such as how and when they can participate in court proceedings.
- Many tenants do not go through the eviction process with a lawyer, not only during their court appearances but in navigating and accessing resources. By including information on resources in the Summons and Complaint a tenant will have needed information directly at their fingertips. Additionally, by bringing such resources into a court setting, the burden can be lessened on the litigant.

Sincerely,

Nevada State Apartment Association
6276 South Rainbow Boulevard • Suite #110
Las Vegas • Nevada • 89118
phone: 702.436.7662 • fax: 702.778.3083 • e-mail: nvsaa@nvsaa.org